

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

AKZO-NOBEL, INC., ET AL, \* Docket No. 96-2430

Plaintiffs, \*

VS \*

June 17, 2010

UNITED STATES OF AMERICA, \*  
ET AL \*

Defendants. \*

Lafayette, Louisiana

\*\*\*\*\*

REPORTER'S OFFICIAL TRANSCRIPT OF THE MOTION HEARING  
BEFORE THE HONORABLE RICHARD T. HAIK  
UNITED STATES DISTRICT JUDGE.

**APPEARANCES:**

For the Plaintiffs:

Jeffrey Wertkin  
Henry Chajet  
Joseph Lemoine

For the Defendant:

David M. Glass  
Katherine Vincent

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# PROCEEDINGS

THE COURT: Let's start with *Methane Awareness*.  
The first is a motion to reopen and next is a motion for  
contempt.

Who filed the motion to reopen?

MR. LEMOINE: I did, Your Honor.

THE COURT: Granted. Have a seat.

Who filed the motion for contempt?

MR. LEMOINE: (Indicating.)

THE COURT: Now you can stand.

MR. LEMOINE: I did that, too, Your Honor. And do you want appearances or --

THE COURT: Yeah, let's do the appearances.

MR. LEMOINE: All right. Joe Lemoine. And I would like to introduce the Court to Mr. Henry Chajet and Mr. Jeffrey Werkin, co-counsel representing the plaintiffs also, and this is Mr. Lonny Badeaux.

THE COURT: Is he co-counsel also?

MR. LEMOINE: No, sir. He is representing the plaintiffs -- well, he is a plaintiff, actually, Your Honor.

And with the Court's permission I would like for Mr. Henry Chajet to make plaintiffs' argument.

THE COURT: All right. I've heard Mr. Badeaux argue a lot of times. I thought you would have Mr. Badeaux argue.

1 MR. LEMOINE: He'd do a good job.

2 THE COURT: Probably better than the lawyers in  
3 this case.

4 MR. LEMOINE: I'm not going to argue that.

5 MR. CHAJET: Good morning, Your Honor.

6 THE COURT: Morning.

7 MR. CHAJET: Thank you for --

8 THE COURT: Do y'all have any objection to opening  
9 this matter because I'm going to open it?

10 MR. GLASS: No, Your Honor.

11 THE COURT: Okay. Good.

12 MR. CHAJET: Thank you, Your Honor, for hearing  
13 this matter this morning.

14 The facts in this case are not in dispute. The  
15 case goes back to --

16 THE COURT: I'm very familiar with this case. This  
17 isn't your first time here -- it may be your first time here.

18 MR. CHAJET: No, I was here, too. In fact, we were  
19 in the old courthouse.

20 THE COURT: That's right. It's been so long.

21 MR. CHAJET: Last time we were here, you had just  
22 moved in here and you were working on getting furniture.  
23 It's been a long time.

24 And the case we thought was resolved when you  
25 issued an order providing a remedy as advised by the Circuit

1 Court of Appeals.

2 THE COURT: Let me hear from the other side. I  
3 understand your argument. I've read your memo. The bottom  
4 line is you want me to hold them in contempt because you said  
5 they didn't comply with the order.

6 MR. CHAJET: We want them to follow the order,  
7 Your Honor.

8 THE COURT: Okay.

9 MR. CHAJET: Thank you.

10 THE COURT: You're welcome.

11 MR. GLASS: Good morning, Your Honor. I'm David  
12 Glass from the Civil Division of the Justice Department in  
13 Washington. And with me is Katy Vincent from the U.S.  
14 Attorney's Office.

15 THE COURT: I know Ms. Vincent.

16 MR. GLASS: I'm sure you know her. And also  
17 DeKeely Hartsfield from the National Institute of  
18 Occupational Safety & Health in Atlanta.

19 THE COURT: Welcome to Louisiana where the oil is  
20 underground and now also in the Gulf of Mexico.

21 MR. GLASS: In the water.

22 Your Honor, I am a newcomer to this case, but as a  
23 newcomer let me tell you what my perception is. My  
24 perception is that plaintiffs have never liked the study that  
25 NIOSH and NCI have been working on all these years and

1       they've been trying to put the kibosh on it from the  
2       beginning. And they don't know what the study is going to  
3       say, but they know they don't like it. And now the study is  
4       almost over and they're going to take one more shot at  
5       stifling it.

6               And what they want is they want to have the chance  
7       to review the papers that set forth the results of the study  
8       and to comment on them before anybody else gets that right.

9               THE COURT: Well, I told them they had that right  
10       to do that. You weren't here.

11              MR. GLASS: I wasn't here, but we don't view  
12       anything that happened in this case or in the Court's order  
13       as giving them that exclusive right.

14              THE COURT: Okay.

15              MR. GLASS: What happened --

16              THE COURT: Well, let me make it clear. Okay?

17              I required y'all to provide them with a copy of all  
18       the documents submitted to the committee in compliance with  
19       this order. Okay? What I didn't do, unfortunately, was  
20       watch the detail on some of this. I don't just blame myself  
21       for that -- although I do, but, you know, nobody else picked  
22       it up either, that we should have had something extremely  
23       detailed so that everybody can be on the same page.

24              MR. GLASS: Well --

25              THE COURT: So I think they're right although I

1 don't think that you're in contempt.

2 MR. GLASS: Well, let me see if I can explain just  
3 a little bit.

4 The Fifth Circuit said that these plaintiffs had a  
5 compelling interest in making sure that the study was done  
6 properly and came out right, and we don't disagree that they  
7 have a compelling interest, but we --

8 THE COURT: I hope you don't because the  
9 Fifth Circuit tells me what to do.

10 MR. GLASS: Sure. Exactly. But the point is  
11 they're not the only folks that have that compelling  
12 interest. The miners --

13 THE COURT: But they're the only folks that are  
14 here in court with us.

15 MR. GLASS: They are the only ones who are here,  
16 but the miners certainly have that same interest and so do  
17 the mine owners, and these folks don't represent all the mine  
18 owners. So we made a proposition to these folks --

19 THE COURT: No, but they represent the mine workers  
20 who are down there inhaling the diesel fumes, and that's what  
21 this is all about.

22 MR. GLASS: But the unions represent them, too.

23 So let me tell you the proposition that we made to  
24 these folks which was when the 90-day review period for  
25 Congress expired -- and it expired on June 1st -- we proposed

1 to them we'll give you the final draft of these papers, we'll  
2 give them to the miners, we'll give them to the mine owners,  
3 and we asked them if they objected to that because we didn't  
4 want to do it if they objected to it because they would have  
5 filed another contempt motion. And they never gave us the go  
6 ahead to do that. We were perfectly willing to do that and  
7 they didn't let us go ahead with it.

8 We viewed the 90 days as a 90-day review period for  
9 Congress because that's what the Fifth Circuit said. And  
10 after all, that provision of the order went into the order in  
11 the second time -- the second iteration of the order after  
12 the provision was in there telling us to give the stuff to  
13 plaintiffs.

14 We have no objection to giving it to plaintiffs.  
15 It's giving it to plaintiffs exclusively. That is the  
16 problem.

17 THE COURT: It's giving it to plaintiffs when.

18 MR. GLASS: We'll give it to the plaintiffs --

19 THE COURT: That's the problem.

20 MR. GLASS: We'll give it to the plaintiffs at the  
21 end of the 90-day period for the congressional review. We'll  
22 give it to them, we'll give it to the union, we'll give it to  
23 the mine owners.

24 THE COURT: Does that give them time to do what  
25 they have to do?

1           MR. GLASS: I don't know what they have to do, but  
2       it's not clear to us why they should have a right to comment  
3       on this above and beyond --

4           THE COURT: Because the Court said they did. And  
5       so did the Fifth Circuit. It wasn't just me, it was them,  
6       too.

7           MR. GLASS: But the Fifth Circuit never said they  
8       had the exclusive right to comment and to review --

9           THE COURT: Nobody said they had the exclusive  
10      right.

11          MR. GLASS: Well, okay. But if we give the papers  
12      to them before we give them to everybody else, then that  
13      gives them an exclusive right.

14          THE COURT: Well, then publish it. What are you  
15      trying to hide?

16          MR. GLASS: That's what we're planning to do.

17          THE COURT: No, no, no. Publish what you're doing.

18          MR. GLASS: That's exactly what we want to do. We  
19      have an academic journal lined up, a part of the Oxford  
20      University Press, to publish this. This is what we want to  
21      do. We want to get this thing out in the open to everybody  
22      so that everybody can take shots at it.

23          THE COURT: Okay. Let's do this. How soon can you  
24      get that report to the plaintiffs?

25          MR. GLASS: We can get it as soon as I get back to



1 Washington.

2 THE COURT: Okay. So 48 hours?

3 MR. GLASS: Sure. Sure.

4 THE COURT: Does that make y'all happy or unhappy?

5 I'm not going to hold them in contempt because  
6 there is some language in here that I can see where they're  
7 coming from. But I want to give you what you want.

8 MR. CHAJET: Your Honor, we would happily accept  
9 delivery within 48 hours.

10 We would like the 90 days to review it before  
11 they -- part of the rationale in your decision and in the  
12 Fifth Circuit's decision was if there are inaccuracies, if  
13 there are biases that we could point out, we should bring  
14 those to the attention of HHS and the congressional  
15 committee, and we would like that opportunity. The 90 days  
16 is not going to do anything to harm them, and it seems like  
17 the only remedy that we have that is real is to have a look  
18 at it.

19 THE COURT: I think you're right.

20 MR. GLASS: Your Honor, why should they have this  
21 exclusive right beyond --

22 THE COURT: It's not exclusive. You're making it  
23 exclusive. You provide it to them so they can review it, and  
24 they can go ahead -- maybe they have some good points. I  
25 think everybody -- don't y'all want to protect the people

1 working in those mines?

2 MR. GLASS: That's why we're doing the study.

3 THE COURT: And so do they. It's better to have  
4 two or three or four or five people looking at all this stuff  
5 and making some decisions. What is your objection to having  
6 them look at it?

7 MR. GLASS: The objection is giving them the  
8 exclusive right. If we can publish it -- if we can publish  
9 it and get it out to the public as soon as we possibly can,  
10 that's what we want to do.

11 THE COURT: Who is preventing you from publishing  
12 it and getting it out to the public?

13 MR. GLASS: Well, that's what this motion is about.

14 THE COURT: Well, wait, listen to me. They want it  
15 before the committee rules on it. They want it before it is  
16 provided to the committee.

17 Have y'all provided it to the committee?

18 MR. GLASS: We provided it to the committee.

19 THE COURT: So they want a right to be able to  
20 address the committee, and they haven't had the opportunity  
21 to see it yet. Correct?

22 MR. GLASS: That's correct.

23 THE COURT: All right. If you want to do all of  
24 this thing in the sunlight and the sunshine of everybody  
25 seeing and knowing, then give it to them, publish it, do

1 whatever you want, and then 90 days later have the  
2 committee -- or ask the committee to review it. I mean, I  
3 don't know the procedure for all of this stuff.

4 MR. GLASS: What we --

5 THE COURT: It seems like we're just playing games  
6 here.

7 MR. GLASS: What happens is that this is a  
8 scientific study and what you're supposed to do with  
9 scientific studies -- the Office of Management and Budget has  
10 ordered us to do this -- you send it out for peer review.

11 THE COURT: I understand.

12 MR. GLASS: What you do is you send it to an  
13 academic journal and they take care of the peer review.

14 After the peer review is done, then we give it to  
15 Congress. That's the final draft of the study. We figure  
16 that Congress doesn't want to look at a preliminary draft,  
17 they can look at the final draft. That's what we have given  
18 them.

19 THE COURT: What you have, though, are miners down  
20 inside the mine who may be able to read -- I know Mr. Badeaux  
21 can read. He is a pretty smart guy. Okay? These people  
22 know -- they -- they have a stake more than the stake that  
23 you have because they're down in the trenches so to speak.

24 MR. GLASS: Sure.

25 THE COURT: Not in the trenches, but down in the

1 mine. This is deeper than a trench.

2 MR. GLASS: Exactly.

3 THE COURT: People have died down there on  
4 occasion.

5 MR. GLASS: That's exactly why we want to give this  
6 to everybody.

7 THE COURT: Okay. Then give it to them right now,  
8 and I'm going to order you can't publish it or do anything  
9 else for 90 days.

10 Is that what you want?

11 MR. CHAJET: Yes, Your Honor.

12 THE COURT: So ordered. Provide me with an order  
13 and do that.

14 And then I'm going to close this thing again after  
15 that so we don't keep doing it.

16 MR. GLASS: Thank you.

17 THE COURT: If what you want to do is let them look  
18 at it, then let them look at it. Give them an opportunity to  
19 evaluate it.

20 I don't know what you're afraid of. Why are you  
21 afraid of them looking at it and making suggestions?

22 MR. GLASS: We're not afraid of anybody. We want  
23 everybody to have an equal chance.

24 THE COURT: Okay. Then everybody will have an  
25 equal chance at the proper time.

1           They're the ones asking for it now. If somebody  
2 else were asking for it now, I would give it to them, too. I  
3 would give it to anybody that wants to look at it so they  
4 could make recommendations for the safety of the miners.  
5 That's what this is all about. I don't know why y'all are  
6 fighting that.

7           MR. GLASS: That's completely what it's all about.  
8 That's why we want to get this thing out in the public as  
9 quickly as we can to everybody.

10          THE COURT: Okay. Well, you heard my order.  
11 Prepare an order. I'll sign it.  
12 If you want to appeal it, take it up. Okay?

13          MR. GLASS: Thank you.

14          MR. CHAJET: Thank you.

15          MR. LEMOINE: Thank you, Your Honor. Have a good  
16 day.

17          THE COURT: I'm trying to get some sunshine down  
18 way below under the ground there.

19          MR. GLASS: Understood.

20          MR. LEMOINE: A little bit above, too.

21          THE COURT: And if you can get together on an order  
22 together that y'all read and submit that is reasonable to  
23 both sides, let me know. If not, each side provide me with  
24 an order and I'll sign the one that is right.

25          MR. GLASS: Thank you.

1 MR. LEMOINE: Thank you.

2 MR. CHAJET: Thank you, Your Honor.

3 (Proceedings adjourned.)

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5 \* \* \* \*

6 **CERTIFICATE**

7

8 I hereby certify this 18th day of June, 2010, that the  
9 foregoing is, to the best of my ability and understanding, a  
10 true and correct transcript of the proceedings in the  
11 above-entitled matter.

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13 S/Mary V. Thompson

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Official Court Reporter

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